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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EX PARTE SANJAY PUJARE, ROBERT DEUEL, NICHOLAS RYAN,
MANUEL BENITEZ, and DAVID LIN

Appeal 2009-000027
Application 09/826,607
Technology Center 2400

Oral Hearing Held: June 11, 2009

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY, III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANTS:

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1 The above-entitled matter came on for oral hearing on Thursday, June
2 11, 2009, at The U.S. Patent and Trademark Office, 600 Dulany Street,
3 Alexandria, Virginia, before Victoria L. Wilson, Notary Public.

4

5 THE USHER: Calendar number 40. Mr. Ahmann.

6 JUDGE BLANKENSHIP: Good afternoon.

7 MR. AHMANN: Good afternoon.

8 JUDGE BLANKENSHIP: I would like to -- can you stand at the
9 podium for us.

10 I want to first ask you about in the Appeal Brief, under related appeals
11 and interference, it says there is a patent being litigated. You said it may or
12 may not be related.

13 MR. AHMANN: It's been settled.

14 JUDGE BLANKENSHIP: Okay. All right. Welcome. You have 20
15 minutes. You can begin whenever you like.

16 MR. AHMANN: So the rejections of the claims since the first office
17 action by this Examiner have been consistently regarding a few phrases that
18 I think can be clarified pretty easily.

19 In the Appeal Brief on page 18 is where I lay out a rebuttal of the
20 Examiner's revised reaction remarks. In the first one, 1.1, the Examiner
21 speaks of conventionally coded, which is language in claim 1, where in the
22 preamble it refers to converting a conventionally coded computer application
23 program into a data set suitable for stream delivery.

24 And the Examiner relies, in part, on paragraph 72 of the specification
25 as filed originally, and in that, I believe that he mischaracterizes the

1 paragraph by saying that we define conventionally coded as an application
2 that's not required, recompiling or re-coding.

3 In paragraph 72, it is -- I'll just quote it -- "The invention is
4 embodying a conventionally coded application conversion system for stream
5 delivery and execution in a computer environment. A system, according to
6 the invention, converts a conventionally coded application program into a
7 streamed application suitable for concurrent execution on a client while
8 being streamed from a server.

9 In addition, the invention provides a system that does not require the
10 conventionally coded application program to be recompiled or re-coded."

11 In this paragraph, I believe that it makes clear that "conventionally
12 coded" is effectively an antonym of "stream-enabled," so an application
13 that's not stream-enabled is converted into an application that is stream-
14 enabled.

15 The Examiner's assertions in each of the office actions, including the
16 final and the advisory action, attempt to take prior art references Eylon and
17 Schmeidler, which is the most relevant, and uses "conventionally coded" to
18 mean an application that does not need to be -- that does not need to be
19 recompiled or re-coded and refers to applications on a client.

20 And the problem with this assertion is that the client receives stream
21 programs, and if it receives streamed programs, then those programs are not
22 going to be converted into a stream-enabled application. It doesn't make any
23 sense to do that. It is already stream-enabled.

24 The second point that the Examiner lays out is that the Eylon prior art
25 discloses the application does not need to be installed on the client PC, and

1 in the Eylon reference and in the Schmeidler reference, the inventors in
2 those cases specifically state that their applications are not installed on the
3 client PC and they use exactly that terminology.

4 In our application, as well, we say our streamed application is not
5 installed on the client computer, as well. The -- so the Examiner is
6 disagreeing with Eylon, Schmeidler and our specification by saying that a
7 streamed application can, in fact, be installed.

8 The third point the Examiner makes is that the Eylon prior art
9 discloses an application transferred from server to client and the application
10 initiates execution before the entire application has been transferred, and
11 then in parentheses states that -- essentially what streaming is, that -- that the
12 -- the entire application does not need to be downloaded.

13 Since our claims refer to -- it actually installed a conventionally coded
14 application. It -- this is a direct contradiction to the Examiner's previous
15 assertion about the stream-enabled applications at the client. You can't have
16 both an application that is -- that is not installed and an application that is
17 installed when you are talking about the same application.

18 The next point the Examiner makes is that the Applicant has argued
19 that the referenced prior art does not disclose redirecting registry
20 information thereby creating registry spoof capability.

21 In fact, Eylon and Schmeidler do not even talk about how to redirect -
22 - to create a registry spoof capability. Arguably, you could say that they --
23 they do redirect by spoof at the registry but even if they do, they don't create
24 that capability.

25 In fact, my understanding of Schmeidler is that they mount a file

1 system and when you mount a file system, the file system is installed on one
2 computer and then mounted on another and, in that case, there is no -- there
3 is no calculation of registry modifications when the application is installed
4 on the original computer.

5 So turning to the claims, then, our -- the first claim which should be
6 illustrative -- the entire claim is referring to what occurs on a computer that
7 is preparing an application to make it stream-enabled.

8 JUDGE COURTENAY: And this happens at the client site.

9 MR. AHMANN: This doesn't happen on the client site.

10 JUDGE COURTENAY: Your preamble says you are streaming from
11 a server to a client but you have this installation monitoring means that is on
12 the local computer system. Is that not the client?

13 MR. AHMANN: Well, the preamble is describing how to convert a
14 conventionally coded application into a stream-enabled application. And
15 this method is describing the conversion of the conventionally coded
16 application into a stream-enabled application which would then be streamed
17 to a client.

18 JUDGE COURTENAY: What do you mean by "a local computer
19 system"? Is that the client or the server?

20 MR. AHMANN: In the case of -- in the case of when you have a
21 stream-enabled application that's been claimed --

22 JUDGE COURTENAY: I'm looking at claim 1.

23 MR. AHMANN: Oh, in claim 1, it doesn't have to be a server or a
24 client. It would -- it could happen at the server or it could happen elsewhere
25 at a stream enablement computer and then the stream-enabled application

1 could be provided to the server.

2 JUDGE COURTENAY: Okay. So the claim is broader then. It
3 could happen either on the client or the server, according to what you just
4 said.

5 MR. AHMANN: Yeah.

6 JUDGE COURTENAY: And a local computer system, just to be
7 clear, can be either a server or a client –

8 MR. AHMANN: Yes, sir.

9 JUDGE COURTENAY: -- under your construction?

10 MR. AHMANN: It -- well, it sounds strange to call it a client because
11 we are talking about streaming applications and if -- if you have an
12 application that's being streamed, it is necessarily going to be streamed from
13 a server to a client just because that's the way we refer to it.

14 But in this case we are preparing an application that can then be
15 streamed, so, theoretically, you could prepare it at the client and then -- but it
16 doesn't make much sense because you would send it to the server in order to
17 stream it. So it could be prepared on any -- any computer.

18 JUDGE COURTENAY: Okay. So a local computer system could be
19 any computer –

20 MR. AHMANN: Yes.

21 JUDGE COURTENAY: -- but, generally, in the preferred
22 embodiment, once you have converted the conventional application into a
23 streamed application, you are going to send it from the server to a client.

24 MR. AHMANN: Yes, sir.

25 JUDGE COURTENAY: Okay.

1 MR. AHMANN: So the problem that I have had with all of the
2 responses, and in my responses I believe I have been pretty consistent, is that
3 the Examiner is using a stream-enabled application to be both a
4 conventionally coded application and a stream-enabled application and
5 mixes them whenever he feels like it.

6 So he never even cited art where they talk about preparing an
7 application to make it streamable and so I'm unable to respond in any other
8 way than I have been continuously responding to the rejections.

9 JUDGE COURTENAY: Well, isn't there a disclosure in Eylon -- I'm
10 looking at column 5, line 53, and I quote here, it discloses, "Prior to
11 streaming an application, the application files are divided into small
12 segments call streamlets."

13 MR. AHMANN: Yes, my -- my understanding --

14 JUDGE COURTENAY: Isn't that a conversion?

15 MR. AHMANN: Yes, that -- that could be a conversion but it doesn't
16 -- there is no evidence that it's done anything like described in our claim.

17 JUDGE COURTENAY: And can you expand on that, specifically --
18 the combination of references don't fairly teach or suggest what?

19 MR. AHMANN: Sure. The Eylon -- Eylon is actually referred to --
20 or is the app stream of family of cases and it is mentioned in our
21 specification as well, as an application that uses a web browser to receive
22 Java servlets -- or streamlets.

23 And this application doesn't describe anything that allows me to
24 distinguish between what they were doing before and what was known at the
25 time that we filed our application and anything new that they may do now,

1 so I don't know how they prepare it but they didn't prepare it like us using
2 the Java servlets, which were executed in a web browser environment.

3 JUDGE COURTENAY: Okay. But Java servlets are not in your
4 claim 1.

5 MR. AHMANN: No, we don't do that.

6 JUDGE COURTENAY: Okay. So what in your claim 1 is not fairly
7 taught or suggested by the cited combination of references?

8 MR. AHMANN: I believe every element -- in claim 1, I can go
9 through each element.

10 JUDGE COURTENAY: I didn't understand your claim at first
11 because I was reading the local computer system on a client and it didn't
12 seem to make sense.

13 MR. AHMANN: It doesn't make sense and that's -- that's what the
14 Examiner was doing, as well.

15 The -- the first element, "providing installation monitoring means,"
16 the -- there is no need, as far as I know, for installation monitoring means to
17 be provided for Eylon, certainly not for Schmeidler.

18 Schmeidler mounts a file system and if a file system is mounted, it is
19 installed on one computer and then you mount it on another and if it is
20 already installed, you didn't need to monitor it to get to that point. Now it is
21 a file system and once you mounted it, it can take advantage of that, so you
22 don't need to know what happened to get to that point, you only need to
23 know that now it works.

24 All right. So Schmeidler is easy to -- to say that there is no need for
25 an installation monitoring means.

1 JUDGE COURTENAY: But isn't the Examiner relying on Eylon for
2 that teaching? I think column 8, line 50, is a disclosure of a monitor that
3 meters the usage of the program to indicate the application status to the end
4 user and perform certain cleanup functions after the termination of the
5 application.

6 MR. AHMANN: I don't know what Eylon does to reach its stream-
7 enabled application. I haven't seen an argument made that comes close to
8 suggesting that they monitor an installation like we claim.

9 JUDGE COURTENAY: Okay. What about column 9 -- I'm looking
10 at the application launcher 110, line 28.

11 "On startup, the application launcher 110 checks for the availability of
12 a valid client environment on the client. In particular, a check is made to
13 ensure that the particular software modules from the streaming support
14 system, 102, which are required to manage the streaming of applications are
15 present."

16 Isn't that a monitoring -- monitoring an installation process?

17 MR. AHMANN: No, because our -- our installation process -- Eylon
18 specifically says that at this point there is no installation. It is saying you
19 have a virtual environment, if you will, that -- that has --

20 JUDGE COURTENAY: Well, it says explicitly, "If a valid client
21 system is not installed, a client installation process can be executed to
22 download the required streaming support system files from the server and
23 install them on the client system." That's column 9 --

24 MR. AHMANN: I'm sorry.

25 JUDGE COURTENAY: I'm looking at line 33 through 36,

1 approximately.

2 MR. AHMANN: You are correct, sir. What they are talking about
3 here is the streaming support system, which is the environment in which the
4 streaming application would run.

5 JUDGE COURTENAY: Yes.

6 MR. AHMANN: At this point there is no streaming application. You
7 first have to get the -- the system installed on the client device that will
8 enable you to stream an application to the client. Without this first
9 occurring, streaming would be impossible.

10 JUDGE COURTENAY: So how is your claim distinguished from
11 that? Your installation monitoring means that you provide, how is that
12 different from that teaching in Eylon that we just discussed at column 9?

13 MR. AHMANN: We are attempting to monitor the installation of a
14 conventionally coded application and then turn it into a stream-enabled
15 application. This installation doesn't convert anything into a stream-enabled
16 application. It simply downloads the virtual environment that's necessary in
17 order to receive a stream application.

18 So the streaming support system is not a stream-enabled application.
19 It is my understanding that you don't stream that.

20 JUDGE COURTENAY: Yes, but your claim recites, "a monitoring
21 means for monitoring an installation process of said conventionally coded
22 application program on a local computer system."

23 MR. AHMANN: So you are saying, then, the example is the
24 streaming support system itself is a conventionally coded application?

25 JUDGE COURTENAY: Okay. Is that the distinction you see?

1 MR. AHMANN: That's the only way that you could start to make
2 that argument, I believe, and if you make that argument, then the installation
3 monitoring means would not care about the registry modifications because
4 this system is actually installed on the client machine. It is an actual
5 installation. It is not streamed.

6 And any registry modifications that are made are made like any other
7 installation. You don't modify them. They just occur and the registry is
8 updated -- on a Windows machine, obviously.

9 So this paragraph isn't really relevant to claim 1 because claim 1 is
10 taking an application like this and making it so that you could stream it.
11 Now, you could -- you can stream this program but that's not what Eylon is
12 referring to here.

13 JUDGE COURTENAY: Okay. So, any other distinctions of claim 1
14 over the prior art you would like to point out?

15 MR. AHMANN: Sure. So the first one, you don't provide an
16 installation monitoring means for monitoring an installation process on the
17 local computer system, assuming that the conventionally coded application
18 program -- I'm sorry -- assuming that the installation monitoring means will
19 gather the information and make system registry modifications. So that's the
20 first two elements of the claim.

21 And then parameterizing the system registry modifications, there
22 would be -- if you are not doing the installation, you also wouldn't have the
23 modifications to parameterize it, so it is kind of hard to say much about that
24 one.

25 And then the providing data set creation means, this also does not

1 occur because the data set creation means is what you use to convert the
2 application into a stream-enabled application. So this paragraph wouldn't --
3 it really wouldn't apply to any of the elements of the claim.

4 JUDGE BLANKENSHIP: Any other questions?

5 JUDGE COURTENAY: No, no further questions.

6 JUDGE BLANKENSHIP: Would you like a minute to sum up?

7 MR. AHMANN: Sure. Thank you.

8 So I guess I'll summarize by saying, basically, what I said before. The
9 rejections that I have received so far have always been an attempt to use a
10 stream-enabled application as a conventionally coded application and then it
11 doesn't make sense later when you attempt to turn that application into
12 stream-enabled, so it always goes around in a circle.

13 All of the rejections that I have received and the responses that I reply
14 with, I tried to work with the Examiner to see if I could -- to figure out how
15 to get around this impasse but in every case, he refuses to let go of the
16 problem that there is never a description in any of the references where you
17 actually convert a conventionally coded application into a stream-enabled
18 application and since it is not in there, it was impossible to make the case
19 and impossible to argue with him.

20 JUDGE BLANKENSHIP: All right, sir. Thank you. We are off the
21 record.

22

23 (Whereupon, the proceedings were concluded on June 11, 2009.)

24